

ORIGINAL  
FILED

2012 OCT 30 P 1:14

EDWARD W. VIER, JR.  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LOCKE LORD LLP  
Regina J. McClendon (SBN 184669)  
rmcclendon@lockelord.com  
44 Montgomery Street, Suite 2400  
San Francisco, CA 94104  
Telephone: (415) 318-8810  
Fax: (415) 676-5816

Jason L. Sanders (SBN 230245)  
jsanders@lockelord.com  
Marc D. Cabrera (Texas Bar No. 24069453;  
*pro hac vice application to be filed*)  
mcabrera@lockelord.com  
2200 Ross Avenue, Suite 2200  
Dallas, Texas 75201  
Telephone: (214) 740-8000  
Fax: (214) 740-8800

Attorneys for Plaintiff  
LEHMAN BROTHERS HOLDINGS INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LEHMAN BROTHERS HOLDINGS INC.,

CASE NO.:

12

5571

Plaintiff,

COMPLAINT

DMR

v.

- 1) BREACH OF CONTRACT
- 2) BREACH OF EXPRESS WARRANTY

PARKSIDE LENDING, LLC, F/K/A ATLAS  
MORTGAGE LENDING, LLC, F/K/A ATLAS  
MORTGAGE LENDING, F/K/A ATLAS  
FINANCIAL,

Defendant.

Plaintiff Lehman Brothers Holdings Inc. ("Plaintiff" or "LBHI"), through its undersigned counsel, for its Complaint against Defendant Parkside Lending, LLC f/k/a Atlas Mortgage Lending, LLC f/k/a Atlas Mortgage Lending f/k/a Atlas Financial ("Defendant" or "Parkside"), hereby states and alleges as follows:

Locke Lord LLP  
44 Montgomery Street, Suite 2400  
San Francisco, CA 94104

FAXED

**NATURE OF ACTION**

1  
2 1. Lehman Brothers Bank FSB ("LBB," and collectively with LBHI, "Lehman")  
3 purchased mortgage loans from Parkside pursuant to a written loan purchase agreement. The loan  
4 purchase agreement specifically incorporates the terms and conditions of the seller's guide of  
5 Lehman's agent, Aurora Loan Services LLC ("Aurora"). The seller's guide sets forth additional  
6 duties and obligations of Parkside. LBB subsequently assigned its rights and remedies under the  
7 loan purchase agreement and seller's guide related to the loans at issue in this litigation to LBHI.  
8

9 2. Parkside breached certain representations, warranties, and/or covenants that it made  
10 under the loan purchase agreement and seller's guide related to two mortgage loans that it sold to  
11 Lehman that require Parkside to repurchase them from LBHI and/or indemnify LBHI from the losses  
12 incurred on such loans where repurchase is not a viable option or does not offer complete relief for  
13 injuries that have been sustained.  
14

15 3. Parkside acknowledged that it was required to repurchase one of the mortgage loans  
16 at issue and entered into an indemnification agreement with LBB and Aurora. LBB and Aurora  
17 subsequently assigned their rights and remedies under that contract to LBHI.

18 4. By this action, LBHI seeks to: (1) require Parkside, pursuant to the terms of the loan  
19 purchase agreement, seller's guide, and indemnification agreement, to repurchase the mortgage loans  
20 that Lehman purchased; and/or (2) recover money damages where repurchase is not a viable option  
21 or does not offer complete relief for injuries that have been sustained.  
22

**PARTIES**

23  
24 5. LBHI is a Delaware corporation with its principal place of business in New York.

25 6. Parkside is a California limited liability company and its only two managing  
26 members, Alan A. Sagatelyan and Matthew J. Ostrander, are California citizens. Parkside may be  
27  
28

1 served with process by serving its registered agent for service of process G. Bradley Hargrave at One  
2 Kaiser Plaza, Suite 445, Oakland, CA 94612, or wherever else he may be found.

3  
4 **JURISDICTION AND VENUE**

5 7. This Court has jurisdiction under 28 U.S.C. § 1332 because there is complete  
6 diversity of citizenship between LBHI and Parkside, and the amount in controversy exceeds  
7 \$75,000, exclusive of interest and costs.

8 8. Venue is proper in this District under 28 U.S.C. § 1391(b) because Parkside resides in  
9 this District.

10 **INTRADISTRICT ASSIGNMENT**

11 9. Assignment is proper to the San Francisco or Oakland Division pursuant to Civil L.R.  
12 3-2(c) and 3-2(d) because Parkside resides in San Francisco County, California.

13 **FACTUAL ALLEGATIONS**

14 10. LBHI incorporates by reference the allegations set forth above as though fully set  
15 forth herein.

16 11. Lehman engaged in the purchase and sale of mortgage loans.

17 12. At all relevant times hereto, Parkside engaged in the business of mortgage lending, as  
18 well as the sale of mortgage loans in the secondary market to investors such as Lehman.

19 13. On February 24, 2005, Parkside entered into a written Loan Purchase Agreement  
20 (Servicing Released Transactions) (the "Agreement") with LBB. The Agreement specifically  
21 incorporates the terms and conditions of the seller's guide ("Seller's Guide") of Lehman's agent  
22 Aurora. The Seller's Guide sets forth additional duties and obligations of Parkside.

23 14. The Agreement and the Seller's Guide set forth the duties and obligations of the  
24 parties with respect to the purchase and sale of mortgage loans, including, but not limited to, the  
25 following: (a) purchase price; (b) delivery and conveyance of mortgage loans and mortgage loan  
26  
27  
28

documents; (c) examination of mortgage loan files and underwriting; (d) representations, warranties, and covenants regarding the parties and individual mortgage loans; and (e) remedies for breach of the Agreement and Seller's Guide.

15. Pursuant to the Agreement and Seller's Guide, Parkside sold various mortgage loans to Lehman, including, but not limited to, Loan No. \*\*\*\*\*5744<sup>1</sup> of Carla Kennedy in connection with the property located at 8122 Ney Avenue, Oakland, CA 94605 (the "Kennedy Loan") and Loan No. \*\*\*\*\*1152<sup>2</sup> of Juan Mendoza and Maria Olvera in connection with the property located at 8572 Derwood Court, Elk Grove, CA 95624 (the "Mendoza Loan").

16. LBB assigned all of its rights and remedies under the Agreement and Seller's Guide to LBHI with respect to the Kennedy and Mendoza Loans.

**A. REPRESENTATIONS, WARRANTIES, AND COVENANTS**

17. With respect to each of the loans Parkside sold to Lehman under the Agreement and Seller's Guide, Parkside made various representations, warranties, and covenants concerning the mortgage loans including, without limitation, the following: (a) the validity of all mortgage loan documentation; (b) the accuracy and integrity of all information and documentation used in making the decision to originate the mortgage loans, including, but not limited to, borrower identity, income, employment, credit, assets, and liabilities; (c) occupancy by the borrower of the property securing the mortgage loan; (d) the ownership, nature, condition, and value of the real property securing the respective mortgage loans; and (e) the conformance of the mortgage loans with applicable underwriting guidelines and loan program requirements.

---

<sup>1</sup> Parkside Loan No. \*\*\*\*\*1047.

<sup>2</sup> Parkside Loan No. \*\*\*\*\*2159.

1           18. Parkside also made various representations, warranties, and covenants that no errors,  
2 omissions, misrepresentations, negligence, fraud, or similar occurrences took place or were  
3 committed by any person involved in the origination of the mortgage loans it sold to Lehman.

4           19. Parkside further made various representations, warranties, and covenants that it had,  
5 and has, the ability to perform its obligations under, and to satisfy all requirements of, the  
6 Agreement and Seller's Guide.  
7

8           20. With respect to certain mortgage loans that Parkside sold to Lehman, material  
9 problems were discovered that constitute breaches of the representations, warranties, and/or  
10 covenants contained in the Agreement and Seller's Guide.

11           21. More specifically, with respect to the Mendoza Loan, Parkside breached certain  
12 representations, warranties, and/or covenants under the Agreement and Seller's Guide because it  
13 submitted a loan package to Lehman that, among other things, included a loan application that  
14 contains misrepresentations of borrower income and employment.  
15

16           22. The Agreement and Seller's Guide provide that in the event of Parkside's breach of its  
17 representations, warranties, and/or covenants, Lehman or its agent may demand that Parkside  
18 repurchase such loans and/or indemnify Lehman for all losses incurred on such loans where  
19 repurchase is not a viable option or does not offer complete relief for injuries that have been  
20 sustained.  
21

22           23. Pursuant to the Agreement and Seller's Guide, any repurchase of a loan that breaches  
23 the representations, warranties, and/or covenants that Parkside made shall occur no later than thirty  
24 (30) days after the earlier of the date on which Lehman notifies Parkside of such breach or the date  
25 on which Parkside knows of such breach.

26           24. Parkside was provided written notice of its breaches of the representations,  
27 warranties, and/or covenants that it made in the Agreement and Seller's Guide with respect to the  
28

1 Mendoza Loan and demand was made that Parkside repurchase the Mendoza Loan and/or indemnify  
2 LBHI for the losses it sustained on the Mendoza Loan.

3 25. Parkside's breaches of the representations, warranties, and/or covenants that it made  
4 in the Agreement and Seller's Guide with respect to the Mendoza Loan proximately caused material  
5 and adverse effects upon LBHI, causing it to suffer losses with respect to the Mendoza Loan that it  
6 would not have suffered had Parkside not breached the Agreement and Seller's Guide.  
7

8 **B. EARLY PAYMENT DEFAULT**

9 26. Pursuant to the Agreement and Seller's Guide, Parkside is required to repurchase at a  
10 specified price any mortgage loan that becomes an "Early Payment Default" loan and/or provide  
11 indemnification for the losses sustained on any mortgage loan that becomes an Early Payment  
12 Default loan.

13 27. A loan becomes an Early Payment Default under the Agreement and Seller's Guide in  
14 one of two ways. For loans prior-approved by the purchaser, the loan becomes an Early Payment  
15 Default if the borrower fails to make the first monthly payment due within 30 days of the payment's  
16 due date. For loans purchased pursuant to the seller's delegated underwriting authority, eligible for  
17 delegated underwriting, or purchased in bulk transactions, the loan becomes an Early Payment  
18 Default if the borrower fails to make the first or second monthly payment due within 30 days of each  
19 such monthly payment's respective due date.  
20

21 28. The Agreement and Seller's Guide specify that Lehman or its agent may demand that  
22 Parkside repurchase, and that Parkside shall repurchase, any mortgage loan that becomes an Early  
23 Payment Default loan and/or indemnify Lehman for the losses sustained on such loan where  
24 repurchase is not a viable option or does not offer complete relief for injuries that have been  
25 sustained.  
26  
27  
28

1       29.     Parkside sold the Kennedy Loan to LBB pursuant to its delegated underwriting  
2 authority.

3       30.     The Kennedy Loan became an Early Payment Default loan because the borrower  
4 failed to make the first and second monthly payment due within 30 days of each such monthly  
5 payment's respective due date.

6       31.     Notice was provided to Parkside that the Kennedy Loan became an Early Payment  
7 Default loan and demand was made that Parkside repurchase the Kennedy Loan.

8  
9       **C.     THE INDEMNIFICATION AGREEMENT**

10       32.     After demand was made to repurchase the Kennedy Loan, Parkside acknowledged  
11 that the Kennedy Loan became an Early Payment Default loan and that it was required to repurchase  
12 the Kennedy Loan, and entered into an indemnification agreement (the "Indemnification  
13 Agreement") with LBB and Aurora.

14       33.     The Indemnification Agreement reserved all rights and remedies against Parkside  
15 contained in the Agreement and Seller's Guide.

16       34.     LBB and Aurora assigned their rights and remedies under the Indemnification  
17 Agreement to LBHI.

18       35.     Pursuant to the Indemnification Agreement, Parkside is obligated to indemnify LBHI  
19 for all losses sustained on the Kennedy Loan.

20       36.     Lehman demanded that Parkside indemnify and compensate LBHI for the losses it  
21 sustained on the Kennedy Loan.

22       37.     Parkside failed and/or refused, and continues to fail and/or refuse, to indemnify and  
23 compensate LBHI for the losses it sustained on the Kennedy Loan.

24       38.     Parkside's failure and/or refusal to honor its obligations under the Indemnification  
25 Agreement has proximately caused material and adverse effects upon LBHI, causing it to suffer  
26  
27  
28

1 losses on the Kennedy Loan that it would not have suffered had Parkside honored its obligations  
2 under the Indemnification Agreement.

3 **FIRST CLAIM FOR RELIEF**  
4 **(Breach of Contract - Damages)**

5 39. LBHI incorporates by reference the allegations set forth above as though fully set  
6 forth herein.

7 40. The Agreement, Seller's Guide, and Indemnification Agreement constitute valid and  
8 enforceable contracts that are binding upon Parkside.

9 41. LBB, Aurora, and/or LBHI have substantially performed all of their obligations under  
10 the Agreement, Seller's Guide, and/or Indemnification Agreement.

11 42. As set forth herein, Parkside has materially breached the Agreement and Seller's  
12 Guide by: (a) breaching certain representations, warranties, and/or covenants that it made to LBB in  
13 the Agreement and Seller's Guide with respect to the Mendoza Loan; and (b) breaching certain  
14 representations, warranties, and/or covenants that it made to LBB in the Agreement and Seller's  
15 Guide with respect to the Kennedy Loan and failing and/or refusing, and continuing to fail and/or  
16 refuse, to indemnify LBHI for the losses it sustained on the Kennedy Loan after it became an Early  
17 Payment Default loan.  
18

19 43. Parkside was provided written notice of its breaches of the representations,  
20 warranties, and/or covenants that it made in the Agreement and Seller's Guide with respect to the  
21 Mendoza Loan and demand was made that Parkside repurchase the Mendoza Loan and/or indemnify  
22 LBHI for the losses it sustained on the Mendoza Loan.  
23

24 44. Also as set forth herein, Parkside has materially breached the Indemnification  
25 Agreement related to the Kennedy Loan. Demand was made that Parkside indemnify and  
26 compensate LBHI for the losses it sustained on the Kennedy Loan, but Parkside failed and/or  
27  
28



1 refused, and continues to fail and/or refuse, to indemnify LBHI for the losses it sustained on the  
2 Kennedy Loan.

3 45. Parkside's breaches of the Agreement, Seller's Guide, and Indemnification Agreement  
4 have resulted in actual and consequential damages in an amount to be proven at trial.

5 46. All conditions precedent to LBHI's recovery have been performed, occurred, or  
6 waived.  
7

8 **SECOND CLAIM FOR RELIEF**  
9 **(Breach of Contract – Specific Performance)**

10 47. LBHI incorporates by reference the allegations set forth above as though fully set  
11 forth herein.

12 48. In the alternative, LBHI seeks specific performance.

13 49. The Agreement, Seller's Guide, and Indemnification Agreement constitute valid and  
14 enforceable contracts that are binding upon Parkside. The Indemnification Agreement reserved all  
15 rights and remedies against Parkside contained in the Agreement and Seller's Guide.

16 50. The contractual repurchase and indemnity provisions are definite.

17 51. The Agreement, Seller's Guide, and Indemnification Agreement are just and  
18 reasonable.  
19

20 52. LBB, Aurora, and LBHI have fully performed all of their obligations under the  
21 Agreement, Seller's Guide, and/or Indemnification Agreement.

22 53. As set forth herein, Parkside has breached the Agreement and Seller's Guide by: (a)  
23 breaching certain representations, warranties, and/or covenants that it made to LBB in the  
24 Agreement and Seller's Guide with respect to the Mendoza Loan; and (b) breaching certain  
25 representations, warranties, and/or covenants that it made to LBB in the Agreement and Seller's  
26 Guide with respect to the Kennedy Loan and failing and/or refusing, and continuing to fail and/or  
27  
28

1 refuse, to indemnify LBHI for the losses it sustained on the Kennedy Loan after it became an Early  
2 Payment Default loan.

3 54. Also as set forth herein, Parkside has materially breached the Indemnification  
4 Agreement related to the Kennedy Loan by failing and/or refusing, and continuing to fail and/or  
5 refuse, to indemnify LBHI for the losses it sustained on the Kennedy Loan.  
6

7 55. Due to the unique and specific nature of mortgage loans intended for securitization  
8 and the real property securing the mortgage loans, LBHI has no adequate remedy at law for redress  
9 of Parkside's breaches of the Agreement, Seller's Guide, and Indemnification Agreement.

10 56. LBHI is therefore entitled to an Order from this Court requiring specific performance  
11 by Parkside of its repurchase and/or indemnity obligations under the Agreement, Seller's Guide, and  
12 Indemnification Agreement.  
13

14 **THIRD CLAIM FOR RELIEF**  
15 **(Breach of Express Warranty)**

16 57. LBHI incorporates by reference the allegations set forth above as though fully set  
17 forth herein.

18 58. The Agreement and Seller's Guide constitute valid and enforceable contracts that are  
19 binding upon Parkside.

20 59. LBB, Aurora, and LBHI have fully performed all of their obligations under the  
21 Agreement and Seller's Guide.

22 60. With regard to each of the mortgage loans Parkside sold to Lehman under the  
23 Agreement and Seller's Guide, Parkside made various express warranties with respect to material  
24 facts concerning each loan as set forth in paragraphs 16 through 18 above.

25 61. The express warranties contained in the Agreement and Seller's Guide were part of  
26 the basis of the bargain and agreement between Lehman and Parkside, and Lehman relied upon those  
27 warranties in executing the Agreement.  
28



1 (d) For recoverable interest;

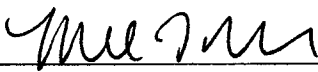
2 (e) For the costs and expenses of suit incurred by LBHI herein, including attorney fees  
3 and costs; and

4 (f) For such other relief as this Court deems just and proper.

5 Dated: October 30, 2012

Respectfully submitted,

6 LOCKE LORD LLP

7  
8 By: 

9 Regina J. McClendon

10 Jason L. Sanders

11 Marc D. Cabrera

12 Attorneys for Plaintiff

13 LEHMAN BROTHERS HOLDINGS INC.  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Locke Lord LLP  
44 Montgomery Street, Suite 2400  
San Francisco, CA 94104